

January 5, 2000

D. T. E. 99-61-20

Complaint filed by Robert J. Lima, pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy for a finding that his long distance telephone service was switched to Qwest Communications, Inc. without authorization.

APPEARANCES: Robert J. Lima

P. O. Box 542

Barnstable, Massachusetts 02630

Complainant

Damian R. LaPlaca, Esq.

Leboeuf, Lamb, Greene & MacRae, LLP

260 Franklin Street

Boston, Massachusetts 02110

FOR: QWEST COMMUNICATIONS, INC.

Respondent

I. INTRODUCTION

On September 13, 1999, Robert J. Lima ("Complainant"), pursuant to G.L. c. 93

§ 108 et seq., filed a complaint with the Department of Telecommunications and Energy alleging that Qwest Communications, Inc. ("Qwest" or "Company") switched his long distance telecommunications service without authorization. On November 23, 1999, the Complainant indicated that he challenged the veracity of the Letter of Agency ("LOA").

On December 20, 1999, pursuant to notice duly issued, the Department conducted an evidentiary hearing. Mr. Lima testified on his own behalf. The Company sponsored the testimony of Maria Bertacchi, a customer service representative.

II. POSITIONS OF THE PARTIES

A. Complainant

The Complainant testified that he learned of the switch in his long distance telephone provider from AT&T to Qwest in August 1999, when he received a monthly invoice (Tr. at 8, 53). Mr. Lima testified that he contacted Qwest to inquire about

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the switch in his service and was told that the switch was authorized by Mr. Lima in a letter of agency ("LOA") signed on July 16, 1999. The Complainant disputed the accuracy of the LOA (Tr. at 12-14).

B. Qwest

Qwest stated that its third-party distributor, Pacific and Sons Company forwarded the LOA with Robert Lima's signature to Qwest (Exh. Qwest-1). After they received the signed LOA, Qwest arranged for the switch in Mr. Lima's long distance carrier effective July 20, 1999 (id.). In response to the Complainant's challenge of the veracity of the LOA, Qwest stated that they terminated Pacific and Sons Company contract on September 1999 (id. at 3).

Qwest indicated that they credited Mr. Lima's account for \$21.20, representing all of the Complainant's usage, monthly recurring fees, and switch fees billed (id.).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange ("IXC") carrier shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed LOA or oral confirmation of authorization obtained by a company registered with the department to provide third party verification services in the commonwealth. G.L. c. 109(b) defines an LOA as a separate document that provides for an authorization to initiate a primary IXC or LEC change.

Massachusetts law provides that for an LOA to be valid, among other things, (1) it must contain the signature and billing address of someone authorized to change the telephone provider, (2) shall not be combined with inducements of any kind on the same document, and (3) shall be printed in 12 point type and contain clear and unambiguous language that confirms the customer's decision to change the primary IXC.

Pursuant to G.L. c. 93, § 110 (i), the Department shall hold a hearing to determine, based on our review of the LOA and any other information relevant to the change in long distance telephone service, whether the customer did authorize the carrier change.

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, §110(i), once Mr. Lima notified the Department of his intent to challenge the veracity of the LOA provided to him by Qwest, a hearing was conducted to determine whether the change in Mr. Lima's long distance carrier was authorized. The Department notes that Qwest did not challenge Mr. Lima's testimony that the signature on the LOA is not his. Thus, the Department finds that Robert J. Lima did not sign the LOA. Moreover, the Department finds that Qwest's inability to provide a valid LOA indicates that the switch in Mr. Lima's long distance service was not authorized.

This is the second time that the Department has found that Qwest switched the long distance service of a Massachusetts resident without authorization. (1) In accordance with G.L.

c. 93, § 112(c) an IXC determined by the Department to have switched a customer's IXC without proper authorization more than once in a 12-month period, shall be subject to a civil penalty. The Department determines that Qwest remit the amount of one thousand and xx/xx dollars (\$1000.00) as a penalty for the unauthorized switch of service. (2)

ORDER

Accordingly, after notice, hearing, consideration, and determination that Qwest Communications, Inc. switched Robert Lima's long distance telephone service provider

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without authorization, it is hereby

ORDERED: That Qwest Communications, Inc. shall comply with the directives contained in this Order; and it is

FURTHER ORDERED: That Qwest Communications Inc. shall submit to the

Department within seven business days of the issuance of this order, an accounting of the refunds made to the Complainant and to the Complainant's previous interexchange carrier.

By Order of the Department,

Janet Gail Besser, Chair

James Connolly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

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Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. See *Agnes Nee v. Qwest Communications, Inc.*, D.T.E. 99-61-19 (1999).
2. An IXC determined by the Department to have intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. § 112(b).